

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

Loramax LLC, <i>Plaintiff</i> , v. Frontier Airlines, Inc., <i>Defendant</i> .	Civil Action No. 2:15-cv-00752-RWS-RSP
JetBlue Airways Corporation, <i>Defendant</i> .	Civil Action No. 2:15-cv-00755-RWS-RSP
Porter Airlines Inc., <i>Defendant</i> .	Civil Action No. 2:15-cv-00757-RWS-RSP
WestJet Airlines Ltd., <i>Defendant</i> .	Civil Action No. 2:15-cv-00767-RWS-RSP

**PLAINTIFF LORAMAX'S RESPONSE TO DEFENDANTS'
MOTIONS AND JOINDER IN DEFENDANT SAFEWAY INC.'S RENEWED
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

Plaintiff Loramax LLC (“Plaintiff” or “Loramax”) files this Response in opposition to Defendants Motions and Joinder in Defendant Safeway Inc.’s Renewed Motion to Dismiss for Failure to State a Claim (*hereinafter* “Defs’ Mts.”))¹ in the above captioned cases.

Defendants’ motions here incorporate by reference and joins Defendant Safeway’s § 101 motion (*Loramax LLC v. Safeway, Inc.*, 2:15-cv-758-RWS-RSP, Dkt. No. 19 (E.D. Tex. Aug. 31, 2015) (*hereinafter* “the Safeway § 101 motion”)). (Def’s Mt. at 1.) Loramax hereby incorporates by reference in its entirety its response in opposition to the Safeway § 101 motion (cv-758, Dkt. No. 21 (*hereinafter* “the Loramax response”)) as its response here to each of the Defendants’ § 101 motions.² The relevant papers cited the Safeway response are substantially similar to the papers in these cases. A true and correct copy a correspondence between Loramax

¹ Defendants’ § 101 motions are: cv-752, dkt. no. 13; cv-755, dkt. no. 14; cv-757; dkt. no. 11; and cv-767, dkt. no. 11.

² To the extent that the Court finds this incorporation by reference results in Loramax’s response exceeding the page limit of L.R. CV-7(a)(1) (30-page limit for case dispositive openings briefs), Loramax hereby requests permission to exceed the page limit by two pages. Loramax further requests relief from L.R. CV-7(d) (the single document requirement).

and Defendants is attached hereto as Exhibit A; Exhibit A hereto is substantially similar to and replaces Exhibit A attached to the Hare Declaration attached to the Loramax response.

Defendants' motion purports to include additional arguments not present in the Safeway motion: (1) claim construction is not necessary (Defs' Mt., § II); and (2) dependent claims are invalid (Defs' Mt., § III). These arguments are generally addressed throughout the Safeway response and more specifically at: (1) Section IV.A; and (2) Section IV.C and fn. 31, respectively. In addition, the credibility of the positions taken by Defendant is strongly suspect.³

Accordingly, Defendant's motion should be denied. In the unlikely event that the Court should consider granting these motions, Loramax requests permission to conduct claim construction and infringement related discovery and leave to amend the complaint.

³ In an effort to avoid burdening the Court with a motion for expedited discovery, Loramax attempted to meet and confer with Defendants to ascertain basic information related Defendants' motions, e.g., whether they disputed any facts in Loramax's First Amended Complaints; whether they had any claim construction arguments regarding infringement or waived such; and whether the claims preempted. (Ex. A at 1.) This information is relevant to the positions taken in Defendants' motions (e.g., the claims only require generic components, there are no claim construction issues, and the claims are broad enough to preempt) and, in particular, to the credibility of such positions. Defendants did not respond to Loramax's email. Defendants' refusal to confirm their positions should weigh heavily against the credibility of such positions taken in their motions and estop them from changing positions going forward.

DATED October 15, 2015.

Respectfully submitted,

/s/ Jaspal S. Hare

By: _____

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ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served on Thursday, October 15, 2015 with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Jaspal S. Hare

Jaspal S. Hare